IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.83 of 1998.
With
RFA No.78 of 1998.

Reserved on: 23.07.2007

Date of Decision: July 26, 2007

For title, please see over-leaf:

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge

Whether approved for reporting?[1] No

For the appellant:	***Mr. Rajnish Maniktala, Advocate vice Mr. K.D. Shreedhar, Advocate .***
For the respondents :	***Mr.Anand Sharma, Advocate for respondents No.1 to 7 in RFA No.83/98 & for respondents No.1 to 4 & 2(a), 2(c) to 2(f) & 2(h) in RFA No.78/98.***
	Mr.M.S.Chandel, Advocate General, with Mr..M.L.Chauhan, Addl. A.G., for respondents No.8 & 9 in RFA No.83/98 and for respondents No.5 & 6 in RFA No.78/98.

Kuldip Singh, Judge.

This judgment shall dispose of RFA No.83 of 1998 and RFA No.78 of 1998 both arising out of common award dated 17.10.1997 passed by learned District Judge, Chamba Division, Chamba, in LAC No.12 of 1993 and LAC No.10 of 1993 respectively whereby learned District Judge enhanced compensation, allowed 30% solatium on the enhanced amount, additional compensation

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[1] Whether reporters of Local Papers are allowed to see the Judgment? Yes

under Section 23 (1-A) at the rate of 12% per annum from 22.4.1992 to 23.4.1993, 9% per annum interest from 23.4.1993 to 23.4.1994 and thereafter at the rate of 15% per annum interest till the amount of compensation is paid or deposited.

2. The facts, in brief, are that State of Himachal Pradesh for construction of Chamera Dam reservoir acquired land in *Mohal Barangal.* The notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') was published on 22.4.1992 and the Land Acquisition Collector (for short 'Collector'), after conclusion of the acquisition proceedings, announced the award on 23.4.1993. The details of the land, structures and details of various amounts of compensation awarded by the Collector are as follows:-

Case No. & Title of the petition	**Area of land and name of structures acquired**	**Amount of compensation awarded.**
LAC No.12/93 Kishan Chand & Others vs. NHPC & others.	Land:27-10 Bighas Structures:	Rs.3,19,860/- Rs.97,170/-
LAC No.10/93 Khair Deen & Ors. vs. NHPC & Ors.	Land: 26-12 Bighas Structures:	Rs.2,40,800/- Rs.900/-

3. The land owners filed reference petitions under Section 18 of the Act for enhancement of compensation. As per land owners, the Collector has given less compensation for the acquired land and

structures. They claimed enhancement of compensation both for the land and the structures.

4. The respondents / State and Collector contested the claim of the land owners on the grounds that market value of the acquired land and structures has been determined correctly and the land owners are not entitled to any enhanced amount of compensation. The Chamera Hydro Electric Project also opposed the claim of the land owners by taking the plea that the Collector has already awarded compensation to the land owners on the higher side, therefore, the land owners are not entitled to any enhancement of compensation. A plea of limitation was also taken.

5. The learned District Judge enhanced the market value of the land and structures by 50%. The enhancement of compensation allowed by learned District Judge for land is as follows:-

Case No. & Title of the petition	**Compensation Awarded by the Collector**	**Compensation Awarded by the Court**	**Net amount of Enhanced compensation**
LAC No.12/93 Kishan Chand & Others vs. NHPC & others.	Rs.3,19,860/-	Rs.4,79,690/-	Rs.1,59,830/-
LAC No.10/93 Khair Deen & Ors vs. NHPC & Ors.	Rs.2,40,800/-	Rs.3,61,200/-	Rs.1,20,400/-

The enhancement of compensation on account of market value of structures allowed by learned District Judge is as follows:-

Case No. & Title of the petition	**Compensation Awarded by the Collector**	**Compensation Awarded by the Court**	**Net amount of Enhanced compensation**
LAC No.12/93 Kishan Chand vs. NHPC & others.	Rs.97,170/-	Rs.1,45,755/-	Rs.48,585/-
LAC No.10/93 Khair Deen & Ors. vs. NHPC & Ors.	Rs.900/-	Rs.1350/-	Rs.450/-

The Chamera Hydro Electric Project is in appeal against the impugned award.

6. I have heard the learned counsel for the parties and gone through the record.

7. The land reference No.12/1993 and land reference No.10/1993 were consolidated by order dated 16.6.1995 / 17.6.1995 of learned District Judge. It was ordered that the evidence shall be recorded in land reference No.12/1993 which shall also be read for disposal in land reference No.10/1993.

8. PW-1 Sushil Kumar, Senior Clerk, H.P. PWD Division, Chamba has placed on record Ext.P-1 letter dated 26.2.1993 conveying acceptance of tender to B.S.Bijawlawan, Ext.P-2 letter dated 7.9.1993 conveying acceptance of tender to Jagdish Chand Dhall. PW-2 Om Parkash, Surveyor NHPC has placed on record Ext.P-3 estimate report regarding house / cow shed of Kishan Chand,

Suresh Kumar and Rakesh Kumar, Ext.P-4 assessment report of house of Kishan Chand, Suresh Kumar and Rakesh Kumar, Ext.P-5 assessment report of temple of Kishan Chand, Suresh Kumar and Rakesh Kumar, Ext.P-6 assessment report of cow shed of Kishan Chand, Suresh Kumar and Rakesh Kumar, Ext.P-7 assessment report of *Gharat* of Paras Ram, Ext.P-8 assessment report of *Gharat* of Khair Deen. PW-3 Milap Chand, Horticulture Supervisor has placed on record Ext.P-9 details of trees of Kishan Chand etc. standing on the acquired land, Ext.P-10 details of trees of Khair Deen standing on the acquired land, Ext.P-11 details of trees of Kehar Singh standing on the acquired land. He has stated that payment of fruit bearing trees was made as per 1966-67 Schedule and that of non fruit trees as per 1989-90 Schedule and of broad leaf trees as per 1991-92 Schedule.

9. PW-4 Jaram Singh has stated that he has seen the acquired land. The houses of the land owners, whose land has been acquired and his own house, are opposite to each other. There is a river in between. The land owned by him is *Barani Awal* which produces 6/7 quintals wheat and maize per bigha. The *Gharat (water mill)* of Khair Deen used to run throughout the year. PW-5 Karam Chand has deposed that *Gharat* of Khair Deen used to run throughout the year. PW-6 Purshotam Ram has stated that he remained President, Gram Panchayat, Barangal for about 40 years and is Numberdar for the last 25 years. He has seen the acquired land which was *Barani Awal* and used to have two crops in one year. He has stated that per Bigha, production of wheat and maize was 7/8

quintals. At Barangal there are Tehsil office, Treasury, Bank, Range Office, School, PWD Office, Hospital etc.

10. Kishan Chand has also made a statement in the Court and has stated that he was owner of 27 Bighas 9 Biswas of land in Mohal Barangal which was acquired for the Project. There were many trees on this land. There were two houses, one temple and three cow sheds. The average production on the acquired land used to be 8/10 quintals of maize, 7/8 quintals wheat per Bigha. In addition to this, they used to grow vegetables, pulses etc. Sherpur and Saklau are at a distance of 40-50 Kilometres from Barangal. Barangal is a Tehsil Headquarter having Tehsil, Bank, Hospital, PWD Office, High School etc. The compensation awarded to the land owners is less. Palehi, Chaklu Mohals are opposite to his Mohal. PW-7 Kehar Singh has deposed that his 18 Bighas 16 Biswas land was acquired. There were 76 non fruit trees on the acquired land, PW-8 Khair Deen has deposed that his land measuring 26 Bighas 12 Biswas was acquired. There were 84 trees of different species on the acquired land. There was a *Gharat (Water Mill)* which used to run throughout the year. The compensation has been awarded to them on the lower side. He used to earn Rs.3000-4000 from Gharat. He had spent Rs.20,000/- for the construction of Gharat and Kuhal. The land owners tendered in evidence through their Advocate copy of awards of Collector Ext.P-12 of Mohal Chaklu and Ext.P-13 of Mohal Palehi.

11. Kehar Singh, Kanungo Chamera Project, Sultanpur has appeared as RW-1 and produced report Ext.R-1 regarding

measurement of Mohal Barangal carried out under Section 8(2) along with Patwari on 16.12.1992 and another report Ext.R-2 dated 23.12.1992 to the same effect. The copies of Khataunis Ext.R-3 to Ext.R-14 were tendered in evidence. Ext.PX is copy of award dated 8.9.1997 passed by learned District Judge, Chamba in land reference No.49/93 pertaining to Mohal Palehi which was tendered in evidence by land owners.

12. The learned counsel for the appellant has submitted that learned District Judge has not relied awards Ext.P-12 and Ext.P-13 or even Ext.PX and without any basis enhanced the market value of the acquired land by 50%. This 50% increase of the market value of the acquired land and structures is not based upon any legal acceptable principle.

13. The documentary evidence such as copies of awards of the Collector Ext.P-12 and Ext.P-13 are not sufficient to assess the market value of the acquired land. The other oral and documentary evidence Ext.P-1 to Ext.P-11 and Ext.R-1 to Ext.R-14 are not sufficient to assess the market value of acquired land. However, Ext.PX is the certified copy of award dated 8.9.1997 passed by learned District Judge, Chamba in LAC No.49 of 1993. This award is also for acquisition of land for reservoir of Chamera Dam in Mohal Palehi. The notification under Section 4 of the Act for acquisition of land covered by award Ext.PX was published on 13.6.1992. In the present case the acquired land is situated in Mohal Barangal.

14. PW-6 Parsohtam Ram, Numberdar village Barangal, has stated that the acquired land was *Barani Awal* and *two fasli and* Mohal Palehi is at a distance of 100 yards from their land. The climatic conditions of Barangal and Palehi are same. This has not been rebutted by respondents by leading cogent evidence. PW-4 Jaram Singh is resident of village Palehi. He has deposed that he had seen the acquired land which was good and *Barani.* Their lands are opposite to each other and in between there is a river. It is, thus, clear from the evidence on record that Mohal Palehi and Mohal Barangal are adjacent and there is distance of about 100 yards between the two Mohals. The oral land documentary evidence pertaining to Mohal Barangal cannot be relied for assessing the market value of the acquired land situate in Mohal Barangal. There is no other evidence of Mohal Barangal to assess the market value of acquired land and structures. In these circumstances, the market value of land situate in adjacent Mohal Palehi and assessed by the learned District Judge in award Ext.PX can be relied.

15. In ***ONGC Ltd. versus Sendhabhai Vastram Patel & Ors., (2005) 6 SCC 454,*** the Hon'ble Supreme Court in Paras-11 and 15 has held as follows:-

> "While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefor has to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method,

> however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the court may take recourse to other methods viz. judgments and awards passed in respect of acquisition of lands made in the same village and / or neighbouring villages. Such a judgment and award in the absence of any other evidence like deed of sale, report of expert and other relevant evidence, however, would have only evidentiary value."

In Para-15, it has further been observed as follows:-

> "Instances of sale in respect of the similar land situated in the same village and / or neighbouring villages should have been taken as guiding factors by the Reference Judge as also by the High Court. In the absence of any better evidence, the Reference Judge as also the High Court could have made addition in the sale prices for the land as evidenced by the said deeds of sale."

16. The learned District Judge in award Ext.PX has assessed the market value of *Barani Awal* land Rs.31,500/- per Bigha. In view of ***ONGC's case (supra),*** the award Ext.PX which is of adjacent Mohal can be relied for assessing the market value of the acquired land. In the impugned award, the learned District Judge has awarded less than Rs.31,500/- per Bigha to the land owners. In view

of award Ext.PX, it can be safely inferred that the learned District Judge has awarded less compensation to the land owners in the present case and as far as appellants are concerned, no fault can be found with the impugned award regarding the acquired land. The land owners have not assailed the impugned award by way of cross objections or separate appeal. This Court in RFA No.127 of 1998 decided on 1.6.2007 has upheld the award of learned District Judge allowing 50% increase in the market value of the acquired land of Mohal Barangal. In that case also, the acquisition of the land was for Chamera Dam Reservoir and notification under Section 4 of the Act was published on 16.5.1992.

17. The learned counsel for the appellant has submitted that 50% increase in market value of structures awarded by the learned District Judge is also erroneous. There is no evidence to support 50% increase in the market value of the structures. The parties have not disputed that the assessment of the structures was made on the basis of 1987 Schedule of rates and no premium was given on the Schedule of rates of 1987 even though the notification under Section 4 in the present case was published on 22.4.1992. The learned District Judge has given 50% increase on the market value of the structures keeping in view the fact that the notification under Section 4 of the Act was published on 22.4.1992 whereas the assessment of the structures was made on the basis of 1987 Schedule of rates. In award Ext.PX the learned District Judge has given 50% increase for the structures. In that case also, the structures were assessed on the

basis of 1987 Schedule of rates and notification under Section 4 of the Act was issued on 13.6.1992. In RFA No.127 of 1998, this Court has approved 50% increase on the market value of the structures which were assessed on the basis of 1987 Schedule of rates even though notification in that case under Section 4 was issued on 16.5.1992. The District Judge has applied uniform pattern of 50% increase for the structures in many cases including the present case. Therefore, no fault can be found with the market value of structures assessed by learned District Judge giving 50% increase over the 1987 Schedule of rates. The learned counsel for the appellant has failed to make out any case for interference regarding market value of the land as well as the structures.

18. The result of the above discussion is that both the appeals, being RFA No.83 of 1998 and RFA No.78 of 1998, are dismissed and awards dated 17.10.1997 passed by the District Judge, Chamba in LAC No.12 of 1993 and LAC No.10 of 1993 are upheld. No costs.

July 26, 2007*(soni)* ***(Kuldip Singh), J.***

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1. RFA No.83 of 1998:

Chamera HE Project , NHPC. ***…..Appellant***

Vs.

Kishan Chand & Ors. ***… Respondents.***

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2. RFA No.78 of 1998:

Chamera HE Project, NHPC ***…Appellant.***

Vs.

Khair Deen & Ors. ***..Respondents.***

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